

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

ANTHOINE PLUNKETT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

Clerk's Office
U. S. District Court

FILED

12/22/2021

Julia C. Dudley, Clerk

By: /s/ Susan Moody
Deputy Clerk

Case NO: 4:21-cv-81473-MFU-PMS

4-04-cr-70083-002

MOTION FOR LEAVE FOR THIRD SUPPLEMENTAL
AUTHORITY PURSUANT TO THE FEDERAL RULES OF
CIVIL PROCEDURE 59(e)

Comes now, Anthoine Plunkett, pro-se; (hereinafter referred
to as "the petitioner"), moving this Honorable Court for leave
to submit a "Third" supplemental motion for reconsideration, pursuant
to "THE FEDERAL RULES OF CIVIL PROCEDURE 59(e).

The petitioner would like for this Honorable Court to take "judicial notice" that additional evidence is forthcoming in the form of an affidavit from "Certified Forensic Audio and Video Analyst", Barry G. Dickey, in further support of his claims and contentions of Ground-#3, of his "second and/or successive" 2255 that this Honorable Court has dismissed. (see: Exhibit-#1 will be submitted as addendum!!) ^{Barry G. Dickey} (Affidavit of Certified Forensic Video & Audio Analyst)

The petitioner further contends that he is awaiting to receive this affidavit of "Certified Forensic Audio and Video Analyst", Barry G. Dickey, via First Class United States Postal Mail, which is going to be an "addendum" to his "Motion For Reconsideration", which goes along with Exhibit-B in this current action. (see: Exhibit-#1)

The petitioner would like for this court to take "judicial notice" that he has received this Honorable Court's "ORDER" of the "Show Cause" notice to the government, which was on Wednesday

December 8th, 2021 via "Certified mail".

The petitioner respectfully asks that this court take into consideration that this "Third" Supplemental authority that he is submitting, shows a "controversion" of the facts of the record, that was used to support his conviction, in addition, to further support of the "Reliability" of the evidence submitted previously in the Expert Report proffered by the petitioner in Exhibit - B of this submission.

The Supreme Court has explained that to be credible, three types of "new reliable evidence" may support a petitioner's allegations of innocence. Schlup, 513 U.S. at 324 (emphasis added). These include "exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence" that Petitioner did not have available to him at trial. SEE: Id.

The petitioner has contended that his "actual innocence"

claim is accompanied by "exculpatory scientific evidence" and/or "critical physical evidence" that he did not have available to him at his trial.

Simply put, the circumstances in this instance demonstrate that the ~~sworn~~ affidavits submitted by "Certified Forensic Document Examiner, Investigator and Handwriting Expert", Wendy Carlson and "Certified Forensic Audio and Video Analyst", Barry G. Dickey, by the petitioner in this case are trustworthy, such that they constitute "new reliable evidence". Schlup, 513 at 324.

The petitioner also avers, that in light of the "reliability" of the Carlson, and Dickey affidavits, reports, analyses, and preliminary examinations, that he has met the burden of producing "new reliable evidence" of his "actual innocence", and humbly requests that this Honorable Court proceed to the second part of the inquiry for the petitioner's gateway "actual innocence"

claim. SEE: Hill, 2010 U.S. Dist. LEADS 137567, 2010 WL 5476755, at *5 ("The Court need not proceed to this second step of the inquiry unless the petitioner first supports his or her claim with evidence of the requisite quality." (citing Weeks, 119 F.3d at 1352-53; Faster, 56 F. Supp. 2d at 610)).

In closing, the petitioner contends that he has established "good cause" for discovery and that he has made a "preliminary" showing in that the requested documents contain exculpatory and/or impeaching informations which should compel production.

The petitioner also alleges that he has put forward "specific allegations" that, if proved would "entitle" (him) to relief. SEE: United States v. Moss, NO: 8:05-0338-GRM, 2008 U.S. Dist. LEADS 73859, 2008 WL 4442613, *1 (D.S.C. Sept. 25th, 2008) (quoting Hall v. United States, 30 F. Supp. 2d 883, 899 (E.D. VA. 1998)) ("a party must make at least a 'preliminary'

showing that requested documents contain exculpatory or impeaching information in order to compel production,').

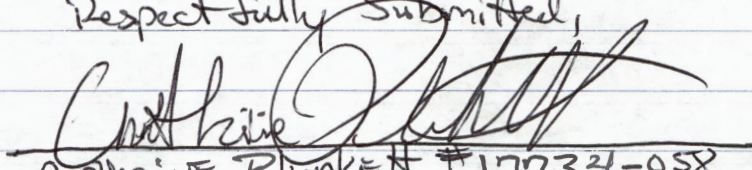
Conclusion

WHEREFORE, the above stated facts, authorities, and reasons, the petitioner humbly comes before this Court establishing "good cause" and a "prima facie" showing in his habeas corpus matter for relief, in establishing the "reliability" and "trustworthiness" of the affidavits submitted on behalf of "Certified Forensic Document Examiner, investigator and Handwriting Expert", Wendy Carlson, and "Certified Forensic Audio and Video Analyst", Barry G. Dickey.

Again, the petitioner reiterates that the sworn affidavit of Barry G. Dickey should be received via First Class United States Postal Mail this week, and that he will promptly submit it as an ~~addendum~~ ^{addendum}, the following week after it's receipt.

For Good Cause shown and the foregoing reasons, the petitioner Prays that this Honorable Court GRANT this "motion for Leave" ("Third" Supplemental) in regards to his "motion for Reconsideration" pursuant to THE Federal Rules of Civil Procedure 59(e).

Respectfully Submitted,


ANTHONY PLUNKETT #17734-058

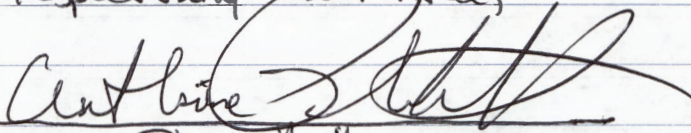
Date: 9th day of December, 2021.

CERTIFICATE OF SERVICE

I, Anthony Plunkett, do hereby certify under the penalty of perjury governed by 28 U.S.C. § 1746, that a true and accurate copy of the foregoing "Motions For Reconsideration" pursuant to the ("Third" Supplemental authority)

Federal Rules of Civil Procedure 59(e), has been mailed via First Class, U.S. Postal Mail, from the mailroom here at Federal Correctional Institution - 2, Butner - II (Medium), P.O. Box 1500, Butner, North Carolina 27509, to the following addressee listed below on this 9th day of December, 2021.

Respectfully Submitted,


Antoine Plunkett #17234-058

UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF VIRGINIA (DANVILLE)
OFFICE OF THE CLERK
P.O. Box 1400
DANVILLE, VA. 24543

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